

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED
for Roanoke
SEP 12 2011
JULIA C. DUDLEY, CLERK
BY: *M. Steg*
DEPUTY CLERK

RICKY LEE HANKINS,
Plaintiff,

Civil Action No. 7:11-cv-00127

v.

MR. BOEHNS, et al.,
Defendants.

MEMORANDUM OPINION

By: Hon. Jackson L. Kiser
Senior United States District Judge

By Order entered April 4, 2011, the court assessed a \$350.00 filing fee and granted plaintiff fifteen days from the date of the Order to forward to the court a statement of his assets and a report regarding his trust account for the six months prior to March 2011, signed by each appropriate prison official where plaintiff was confined during that time so the court could determine a payment schedule. Plaintiff was advised that failure to return the required paperwork would result in dismissal of this action without prejudice.

Plaintiff filed his Complaint in March 2011. Plaintiff filed with the Complaint certified inmate account reports of the three-month period prior to March 2011, not the six-month period. Plaintiff did not forward to the court information from his prior correctional facility and did not request an extension of time before the deadline passed. Even if plaintiff wanted more time after the deadline passed, he did not file a motion requesting it and did not establish any excusable neglect. See Fed. R. Civ. P. 6(b)(1)(B). Therefore, plaintiff did not timely comply with the conditional filing order, despite the warning that his action may be dismissed without prejudice for noncompliance, and the court cannot determine the appropriate filing fee assessment, pursuant to 28 U.S.C. § 1915(a). Accordingly, this action must be dismissed without prejudice for plaintiff's failure to pay the filing fee or properly document his application to proceed in forma pauperis after the court's order. Plaintiff may refile his claims in a new and separate

action at the time he can pay the \$350 filing fee or file the necessary documents to proceed in forma pauperis.

The Clerk is directed to send a copy of this Memorandum Opinion and the accompanying Order to plaintiff.

ENTER: This 12th day of September, 2011.



Jackson L. Kisi
Senior United States District Judge